IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 184 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL BULAKJIDAS MODI

Versus

STATE OF GUJARAT

Appearance:

MR MS BAQUI for MR SA BAQUI for Petitioner

MR BY MANKAD APP for Respondent No. 1

Respondent no.2 though appeared as

PARTY-IN-PERSON, absent though duly served.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 16/11/2000

ORAL JUDGEMENT

This is a Criminal Revision Application filed by accused of Criminal Case No.209 of 1991 which was pending on the file of the learned Metropolitan Magistrate, Court No.16, Ahmedabad City (who will be referred to hereinafter as the learned Magistrate for the sake of brevity), challenging the correctness, legality and propriety of an order dated 15/6/1992 passed below appeal memo of Criminal Appeal No.23 of 1992 which was presented by the petitioner of this present Criminal Revision Application to the Court of the learned City Sessions Judge, Ahmedabad.

2. The present revision petitioner who was an accused in Criminal Case No. 209 of 1991 was tried for an offence punishable under Sec. 138 of Negotiable Instruments Act, (for short "the Act") in a case registered on the basis of a complaint lodged by Harakhmal Mohanbhai who is a revision opponent no.2 in this present matter. At the end of trial, the accused has pleaded guilty for an offence punishable under Sec.138 of the Act, the learned Magistrate, who conducted that case, convicted the accused for the said offence and sentenced him to undergo simple imprisonment for four months and to pay a fine of Rs.1,000/-, in default, to undergo further simple imprisonment for one month.

3. Being aggrieved against and dissatisfied with the aforesaid judgment Ex.3 of conviction and sentence rendered in Criminal Case No.209 of 1991, the accused preferred aforesaid Criminal Appeal No.23 of 1992 to the learned Appellate Judge. It appears from the record that the accused in his capacity as an appellant submitted appeal memo on 9th June, 1992. Below that appeal memo, the learned Appellate Judge passed an impugned order rejecting that appeal summarily. That order reads as follows:-

"ORDER"

Heard L.A. Shri S.A.Baqui.

There is no substance in the appeal. No interference when is called for in the finding of guilt recorded by the honourable court. No prejudice appear to have been caused to the accused. Hence appeal is summarily rejected."

4. Being aggrieved against and dissatisfied with the aforesaid order dated 15/6/2000 passed below appeal memo of Criminal Appeal No.23 of 1992, the original accused

has preferred this Criminal Revision Application.

5. I have heard Shri M.S.Baqui, the learned advocate for the revision petitioner and Shri B.Y.Mankad, the learned APP for the revision opponent no.1 i.e. State. Revision opponent no.2 who appeared as Party-in-Person, was absent though duly served with the notice.

6. I have gone through the impugned order which is challenged in this Criminal Revision Application. Shri Baqui, the learned advocate for the revision petitioner has argued that the learned Appellate Judge has, without assigning any reason, straightway rejected the appeal summarily and that too by passing an order below appeal memo. As per his arguments, this order cannot be said to be a legal and correct order, because when appeal is preferred, the appellant must know as to for what reasons, his appeal has been dismissed.

7. Here in this case, the learned Appellate Judge has not dismissed the appeal, but straightway, rejected the same summarily. In support of his arguments, Shri Baqui has cited an authority of SHIVAJI NARAYAN BACHHAV Vs. STATE OF MAHARASHTRA, reported in AIR 1983 SUPREME COURT, 1014, wherein the Hon'ble Supreme Court has observed, with pain, as follows:

" We are pained, and not a little perturbed, that despite the long series of judgments all arising from cases from the same High Court, the High Court has not chosen to correct itself and continues in the error of its ways. Except in certain cases, when an accused person has pleaded guilty and in petty cases, every person convicted of an offence has a right of appeal under the Cr.P.C. An appeal may be both against conviction and sentence and on facts and law. A convicted person is entitled to ask an appellate Court to reappraise the evidence and come to its own conclusion. An appellate Court has the undoubted power to dismiss an appeal in limine. Section 384 of the Cr.P.C. provides for it. But, it is a power which must be exercised sparingly and with great circumspection. One would think a conviction for murder and a sentence of imprisonment for life, as in the case before us, were serious enough matters for the High Court to warrant 'admission' of the appeal and fair and independent consideration of the evidence by the High Court. Summary rejection of the appeal with the laconic expression 'dismissed' seems to be a

> drastic step in such cases. To so reject an appeal is to practically deny the right of appeal. We cannot also overemphasis the importance of the High Court making a speaking order when dismissing a Criminal Appeal in limine. "The requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process". There must be some indication that the High Court addressed itself to the questions at issue and had the record before it. In the present case, there is not even an indication whether the record had been called for and whether it was before the Court. We have little option but to set aside the order of the High Court. The High Court may now 'admit' the appeal and deal with it according to law.
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> Appeal allowed."

8. It is true that in Sec.384 Cr.P.C. powers are given to the Appellate Court to dismiss appeal summarily. There is provisio-A below Sec.384 Cr.P.C. which speaks that no appeal presented under Sec.382 shall be dismissed unless the appellant or his pleader has had reasonable opportunity of being heard in support of the same. Sec.382 speaks for presentation of appeal. Here in this case, the learned appellate Judge has straightway passed an order below appeal memo within the meaning of Sec.382 Cr.P.C. In view of aforesaid proviso, reasonable opportunity ought to have been given to the appellant or his advocate. Even for compliance of principles of natural justice, an opportunity of being heard ought to have been given to the appellant before passing an order of rejection of appeal summarily. If we read order which is challenged in this Criminal Revision Application, we find that the learned Judge has not invited the learned advocate to substantiate his appeal. Of course, there is a reference to the effect that the learned advocate Shri S.A.Baqui was heard, but at the same time, it also clearly appears that at the time of passing order, there was no record of the case with the learned Sessions Judge. The learned Judge has observed that no interference is called for. When accused has pleaded guilty recorded by the Court, he ought to have given reasons for it.

9. Under the above circumstances, and as suggested by the learned advocates of both the parties, this Criminal Revision Application deserves to be allowed, and the impugned order requires to be set aside. Under such circumstances, necessary directions are required to be

given to the learned Appellate Judge.

10. In view of what is stated hereinabove, this Criminal Revision Application is allowed. The impugned order dt. 15/6/1992 passed below memo of appeal of Criminal Appeal No.23 of 1992 is set aside. Criminal Appeal No.23 of 1992 which was pending on the file of the learned City Sessions Judge, Ahmedabad is remanded back to the learned City Sessions Judge, Ahmedabad. The learned City Sessions Judge is directed to decide Criminal Appeal No.23 of 1992 after affording full opportunity of being heard to the learned advocate for both the parties, afresh in accordance with law, strictly on merits, in the light of the observations made by the Hon'ble Supreme Court in case of Shivaji Narayan Bachhav (supra) as referred to in Para 7 of this Judgment. Rule is made absolute accordingly.

Date: 16/11/2000. (H.H.MEHTA,J.)
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